

## REMARKS

After entry of this Amendment, the pending claims are: claims 1 and 4-21. The Non-Final Office Action, dated August 5, 2010, has been carefully considered. Claims 2, 3, 22 and 23 have been canceled. Claims 1, 4-7 and 21 have been amended. Claims 7 and 21 were amended to correct minor typo-grammatical errors. Support for the amendments to claims 1 and 4-6 can be found throughout the Specification and Drawings and specifically in Figures 1 and 6. Accordingly, no new matter has been added. Reconsideration and allowance of the pending claims in view of the above Amendments and the following remarks is respectfully requested.

In the Non-Final Office Action, dated August 5, 2010, the Examiner:

- objected to the drawings for failing to comply with 37 C.F.R. 1.84(p)(5);
- objected to the specification for containing one or more informalities;
- objected to claim 21 for containing one or more informalities;
- rejected claims 1-21 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention;
- rejected claims 1 and 4 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,273,496 to Mitchell ("Mitchell");

- rejected claims 2, 3 and 5-7 under 35 U.S.C. 103(a) as being unpatentable over Mitchell;
- rejected claims 8-13, 22 and 23 under 35 U.S.C. 103(a) as being unpatentable over Mitchell in view of U.S. Published Patent Application No. 2004/0143332 to Krueger *et al.* ("Krueger");
- rejected claims 14-20 under 35 U.S.C. 103(a) as being unpatentable over Mitchell in view of U.S. Published Patent Application No. 2002/0052656 to Michelson ("Michelson"); and
- rejected claim 21 under 35 U.S.C. 103(a) as being unpatentable over Mitchell in view of U.S. Patent No. 4,759,769 to Hedman et al. ("Hedman").

## **DRAWINGS**

The drawings were objected to for failing to comply with 37 C.F.R. 1.84(p)(5). Specifically, Figure 4 and 5 were objected to for including reference numbers 12, 16, 22 and 26, which were not described in the specification. Applicants respectfully submit that reference numbers 12, 16, 22 and 26 were fully disclosed in the Abstract of the application. Furthermore, paragraph 36 of the published application has been amended to include "[t]he upper section 10 further including a ventral side area 11, a dorsal side area 12, two lateral side areas 13, 14, and a bottom surface 16. The lower section further including a ventral side area 21, a dorsal side area 22, two lateral side areas 23,24, and a top surface 26." Applicants respectfully submit that no new matter has been added and that such amendment is

fully supported by the as-filed specification including, *inter alia*, the Abstract. Withdrawal of this objection is respectfully requested.

#### **SPECIFICATION**

The specification was objected to for containing one or more informalities. Applicants respectfully submit that appropriate corrections have been made. Withdrawal of this objection is respectfully requested.

#### **DEPENDENT CLAIM 21**

Dependent claim 21 was objected to for containing one or more informalities. Applicants respectfully submit that appropriate corrections have been made. Withdrawal of this objection is respectfully requested.

#### **35 U.S.C. 112, SECOND PARAGRAPH**

Claims 1-21 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claims 1-3 and 5-7 were rejected for reciting “swivel axle” rather than “swivel axis”. Applicants respectfully submit that appropriate corrections have been made. Withdrawal of this rejection is respectfully requested.

## INDEPENDENT CLAIM 1

Independent claim 1 was rejected as being anticipated by Mitchell. As amended, independent claim 1 is directed to an intervertebral implant and recites, as follows:

a central axis, an upper section, suitable for laying onto the base plate of a vertebral body lying above, and a lower section suitable for laying onto the cover plate of a vertebral body lying below, wherein: the upper section has a ventral side area, a dorsal side area, two lateral side areas, a top apposition surface, and a bottom surface; the lower section has a ventral side area, a dorsal side area, two lateral side areas, a bottom apposition surface, and a top surface; and the two sections are moveable in relation to each other via two joints arranged between the two sections, wherein: each of the joints has a swivel axis and the two swivel axes are arranged transversely or perpendicular to each other; and the two joints comprise an upper joint element connected with the upper section, a central joint element, and a lower joint element connected with the lower section, *wherein: each joint comprises a wedge member having a pointed tip for bearing against a second joint section in a way that allows tilting around the swivel axis.* (Emphasis added).

Applicants respectfully submit that there is no disclosure, teaching, or suggestion in Mitchell of an intervertebral implant including *a wedge member having a pointed tip for bearing against a second joint section in a way that allows tilting around the swivel axis*, as is claimed in amended claim 1. Rather, at best, Mitchell discloses round pins. Therefore, it is respectfully submitted that Mitchell does not disclose, teach, or suggest all of the limitations of independent claim 1. Thus, it is respectfully submitted that amended claim 1 is allowable over Mitchell for at least this reason as well. Withdrawal of this rejection and allowance of amended claim 1 is respectfully requested.

Furthermore, as claims 4-21 all depend from independent claim 1, it is submitted that these claims are equally allowable. Withdrawal of these rejections and allowance of claims 4-21 is also respectfully requested.

### CONCLUSION

Based upon the above-listed amendments and remarks, Applicants respectfully submit that the present application, including claims 1 and 4-21, is in condition for allowance and such action is respectfully requested.

No fee is believed due for this submission. If, however, the Commissioner determines otherwise, the Commissioner is authorized to charge any fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicant's attorney at the number listed below.

Date: August 31, 2010

Respectfully submitted,  
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